THE REMEDY FOR LYNCH LAW.

The great increase of homicides by lynching in the United States within the past few years has excited grave apprehension in all who realize how important to society is the due and regular administration of justice in criminal cases, and various remedies have been from time to time suggested. Perhaps one reason why none of these seem so far to have met with much success in arresting the evil is because of a failure on the part of those who suggest them to properly appreciate the grounds upon which these lynchings are sought to be justified by the more intelligent and better classes of those people who either condone, approve of, or actually participate in them. That there must be some excuses affording at least an apparent justification for them is evident from the fact that they have in almost every case the moral support of a large part and sometimes that of a majority of the communities in which they occur. As illustrating this state of affairs we read in a late newspaper that at the meeting of the Georgia State Agricultural Society at Tybee Island on August 10th, the wife of ex-Congressman Wm. H. Felton of Cartersville, who had been a member of the Board of Lady Managers of the Columbia Exposition, delivered an address upon "The Woman on the Farm," in which she used the following language:

"If it needs lynching to protect woman's dearest possession from human beasts, then I say lynch a thousand times a week if necessary. The poor girl would choose death in preference to such ignominy, and I say a quick rope to assaulters! The crying need of women on the farm is security.

"Strong, able-bodied men have told me that they have quit farming because their women folks were scared to death if left on the place."

And to show that the feeling thus expressed is not peculiar to any one section of the country we also read that within a few weeks before the delivery of this speech by Mrs. Felton in Georgia, a mob of "the better class of citizens" at Urbana, in the State of Ohio, took a negro from the jail and lynched him for "the usual crime."

It is obvious that the only plea in any way justifying private citizens in thus taking the law into their own hands for the punishment of offenders must be that of self-defense, in which term

I include the protection of one's family and property. Such protection can be furnished in general only by the reasonably prompt and certain punishment of those who violate the rights of person or property; and when the ordinary machinery for the administration of justice for any reason proves utterly inadequate to secure such punishment, it may sometimes be found absolutely necessary to resort to extraordinary methods of procedure for that purpose. But in the punishment of the particular crime, to which must be mainly attributable that epidemic of lynching that now prevails throughout the country, courts and juries generally show considerable promptitude in convicting the accused whenever there is sufficient evidence to sustain the charge, and rarely clear the guilty upon fine-drawn legal technicalities. The main ground for complaint cannot be found in any want of either ability or inclination on the part of the constituted authorities to mete out due punishment to offenders of this class, but is to be sought rather in the methods of procedure by which alone the power of the law can be invoked against them.

Under the system of criminal procedure which prevails generally throughout the United States convictions can only be obtained upon the testimony of witnesses who are present in court. Ordinarily the witnesses must first appear before the committing magistrate, then before the grand jury and finally before the trial court. Before the committing magistrate and in court they testify in the presence of the accused and subject to cross-examination by him or his counsel. In cases of rape and attempted rape it is rarely possible to obtain sufficient evidence to justify a committal or indictment, much less a conviction, without the testimony of the woman who has been assaulted. Now when we consider how profoundly humiliated any woman must feel who has been the victim of an outrage of this character, and how, under existing social conditions, this humiliation must be greatly intensified by the wrong having been committed by a negro, is it possible to deny that requiring her to tell the story of her shame publicly three times, the last time in a crowded court room, where, subjected to a long and hostile cross-examination, she may be compelled to recapitulate all the details of the crime with the minutest particularity, would be nothing less than inflicting upon her a degree of mental torture scarcely inferior to that attending the outrage itself? As a matter of fact, I believe it to be a natural desire to shield the victim of outrageous assaults from the ordeal of thus testifying about them in court which more than anything else causes lynch law

to be resorted to. Given a case where a crime of this sort has been committed and where a man has been caught whom the woman identifies as her assailant, unless she be a person of notoriously abandoned character, it will be very hard to convince the average citizen living in her neighborhood, that it is not a far less evil to anticipate the sentence of the law by promptly lynching the accused, than it would be to make a public spectacle of her in the court house in order to procure his conviction and punishment according to law. This popular feeling would of course be very much stronger if the man charged with the crime should be a negro. How far this prevailing sentiment may be theoretically right or wrong, it is now useless to inquire. The daily papers show us that as a fact such a feeling does now widely exist throughout the country, and it is therefore "a condition, not a theory, which confronts us."

To correct the evil we must recognize the existing condition, and adapt our remedies to it. Until some method can be found to avoid the necessity of requiring the woman to appear upon the witness stand in open court in order to convict her assailant of rape, there will unquestionably always continue to prevail a strong feeling that a resort to lynch law for that purpose is justifiable under the circumstances. It is not for a moment supposed that the removal of this cause of complaint will *of itself* suffice to at once put an end to lynching, but it is submitted that in view of recent experiences there can be but little hope of preventing lynching in cases of rape, especially when committed by negroes, so long as the women must be brought into court to testify; and that wherever lynching is tolerated for one cause the tendency will be always very great to extend its operations and apply it for other causes. In proof of this last assertion I need only refer to the lynching, since the foregoing sentence was written, of five men in Ripley County, Indiana, for stealing.

Let us consider, therefore, how far it may be practicable to do away by legislation with the present necessity for requiring a woman who has been the victim of an outrage to appear upon the witness stand in open court. The existing law is concisely stated by Judge Cooley in his work on "Constitutional Limitations," page 318, as follows:

"The testimony for the people in criminal cases can only, as a general rule, be given by witnesses who are present in court. The defendant is entitled to be confronted with the witnesses against him, and if any of them be absent from the Commonwealth, so that their attendance cannot be com-

pelled, or if they be dead, or have become incapacitated to give evidence, there is no mode by which their statements against the prisoner can be used for his conviction. The exceptions to this rule are of cases which are excluded from its reasons by their peculiar circumstances; but they are far from numerous. If the witness was sworn before the examining magistrate, or before a coroner, and the accused had an opportunity then to cross-examine him, or if there were a former trial on which he was sworn, it seems allowable to make use of his deposition, or of the minutes of his examination, if the witness has since deceased, or is insane, or sick and unable to testify, or has been summoned but appears to have been kept away by the opposite party. So, also, if a person is on trial for homicide the declarations of the party whom he is charged with having killed, if made under the solemnity of a conviction that he was at the point of death, and relating to matters of fact concerning the homicide which passed under his own observation may be given in evidence against the accused.

In making any modification of the law of evidence as thus stated it is of course imperative that due care be taken not to infringe upon the rights of the accused which are secured by the Constitution of the United States, and also by those of most if not all of the several States to a trial by jury and "to be confronted with the witnesses against him." The latter of these is not only a constitutional but a natural right which has been long recognized wherever an inherent sense of justice and fairness has prevailed, for when the Jews applied at Jerusalem to Festus, their Roman Governor, to give judgment against the Apostle Paul, then a prisoner at Cæsarea, he answered, "It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him."

While, however, the accused has an undoubted right to be confronted with the witnesses against him and to cross-examine them or have them cross-examined by his counsel in his presence, there is no ground either constitutional or natural why this right should in all cases be exercised by him in open court, and moreover, there is abundant authority for the proposition that these rights like most others, may be voluntarily waived by a failure on his part to avail himself of them with reasonable promptitude when a fair opportunity had been offered him to do so.

The following tentative draft of a statute is submitted as illustrating the general character of the legislation which is in the opinion of the writer necessary as a prerequisite to any effective dealing with the question of lynch law in the United States at the present time.

DRAFT OF AN ACT TO AMEND CRIMINAL PROCEDURE IN CERTAIN CASES.

1. Whenever the State's Attorney shall have good reason to believe that the crime of rape has been committed, or attempted, or that any outrageous or indecent assault has been made upon any woman or woman-child in his county, he shall at once give notice thereof to a judge of the court having criminal jurisdiction of said offense, who shall, as soon thereafter as conveniently may be, cause the person so assaulted to come before him, and shall forthwith examine her upon oath privately concerning the said matter. No person shall be present at such examination besides the said judge and the witness, excepting the clerk or stenographer appointed to take down her testimony, and one other person to be selected by the witness. The testimony shall be reduced to writing, signed by the deponent and attested by the judge before whom it is taken, and shall be by him delivered to the State's Attorney, who shall be at liberty to use it as competent testimony in any proceeding before any committing magistrate in which the matters therein testified to would be admissible evidence if testified to by the said deponent orally.

2. The said deposition taken as provided in the preceding section shall be competent evidence before any grand jury to the same extent as would the oral testimony of the deponent to the matters therein contained, unless the judge before whom the same was taken shall at the time of certifying thereto have endorsed upon it a memorandum to the effect that in his opinion the purposes of justice require that said deponent should testify orally before the Grand Jury.

3. Whenever any person shall be indicted for any offense testified to in any deposition taken under the preceding sections, the State's Attorney for the county shall forthwith furnish him with a copy of such deposition, and shall cause him as soon thereafter as conveniently may be to be brought before a judge of the court having criminal jurisdiction of the case and then and there confronted with the said deponent, whom the State's Attorney shall thereupon interrogate under oath touching her ability to identify the prisoner as the person whom she alleges to have assaulted her, and also as to such other matters as the judge shall deem relevant to the case. The said deponent may then be cross-examined by the prisoner or his counsel to the same extent as would be admissible in court if she there testified orally to all the matters embraced in the original deposition and her subsequent examination by the State's Attorney, and she may be afterwards reëxamined by the State's Attorney. The only persons allowed to be present at such examination, beside those allowed at the taking of the original deposition, shall be the State's Attorney, the accused and one counsel representing him. The whole testimony of the said deponent given at said subsequent examination in the presence of the accused shall be committed to writing, signed by the deponent and certified to by the said judge and annexed to her original deposition, and the said deposition and subsequent deposition so taken and certified, may be read in evidence to the jury at the trial of the case with the same effect as if the deponent had testified orally in court to all the matters therein contained. *Provided*, That the trial judge or judges may, in his or their discretion, at any time before the jury is sworn, if convinced that justice to the accused demands it, require the said deponent to testify orally in conrt by giving a reasonable notice thereof to the State's Attorney.

It is believed that the foregoing draft of an act provides for taking the testimony of women upon whom outrageous assaults have been made with all the privacy and delicacy compatible with a due regard for the rights of the accused. The preliminary examination by the judge, presumably a man of a fair degree of education and refinement, as well as of considerable experience in sifting evidence, with no one present excepting his amanuensis and such friend or relative of the deponent as she may desire to be with her in order to give her confidence and moral support in the distressing position in which she finds herself, made as soon as possible after the occurrence, would be as effective and at the same time as delicate a method of getting at the exact truth as could be well desired. The subsequent confronting her with the accused and her cross-examination by his counsel with the same privacy and before the same judge, whose duty it would be to see that this privilege of cross-examination should be restricted within proper limits and exercised with decency and propriety, would reduce to a minimum the painful embarrassments which must inevitably attend the situation. It will be noticed that, while the proposed law provides that the depositions taken under it may be read in evidence to the jury at the trial, it does not require them to be read aloud in the court room. The judge might well allow the jury to withdraw for a few minutes to their room while one of them could there read the deposition to the others, after which they could return to hear the other evidence in the case. The counsel for the accused having a copy of the deposition could in his arguments refer to so much of it as he might find necessary without going into all the details. It would, of course, be a grave breach of propriety for the State's Attorney to let the reporters see the paper, and would be greatly for the interest of the prisoner to prevent its publication, as nothing would be more likely to excite public indignation against him to such an extent as might lead to his being lynched. The provisions clothing the judge with discretionary power to require the woman to testify orally before the grand jury and in open court at the trial are inserted to prevent any advantage being taken of the act by those abandoned characters who sometimes trump up unfounded charges of rape against wealthy or prominent citizens for the purpose of levying blackmail.

Wm. Reynolds.

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